

SA2004RF0004

Phone 408-287-8388

State of California
Attorney General Bill Lockyer
1300 I Street Sacramento AC 95814
Attention Tricia Knight
1-4-2004

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

To the Honorable Attorney General Bill Lockyer,

Please provide a title for the enclosed Initiative measure for the General Election of Nov. 5-2004. This measure is inspired and modeled after Section 1988 Attorney's fees, Civil Right which my first cousin, Armand Derfner, initiated and past through Congress. I applied the Attorney's fees idea to land use issues for the following reasons.

Summary: Currently municipal residents that are injured economically or otherwise by municipal agencies or municipal practices are at significant disadvantage if they attempt to air their grievances in a court of law. Municipalities have virtually unlimited sources of funds to finance legal actions. Individual residents are often unable to bring or maintain litigation in light of this massive imbalance. This proposal serves to cure this imbalance by providing resident's costs and reasonable attorney's fees should resident win their case.

The resident at present cannot be helped by the County, State or Federal Agencies, because these Agencies do not have jurisdiction over City's Land Use issues.

Municipalities can call us in anytime they want within 90-days regardless of the nature fairness of the complaint. At the same time, if a property owner wishes to respond in a later date to present their case before the Municipality or County board agenda, the Municipality can deny them the opportunity to present their case indefinitely. This Initiative would increase property owners' rights, opportunity to present such concerns before the Municipalities.

Thank You,
Nitza Derfner

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9607. (a) The proponents of an initiative measure shall ensure that any person, company, or other organization that is paid, or who volunteers, to solicit signatures to qualify the proposed measure for the ballot shall receive instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition and signature gathering thereon, with an emphasis on the prohibition on the use of signatures on an initiative petition for a purpose other than qualification of the proposed measure for the ballot.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, NITZA DERFNER, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent)

Dated this ____ day of _____, 20__

(b) The certification required by subdivision (a) shall be kept on file by the agency authorized to prepare the title and summary for the proposed initiative measure for not less than eight months after the certification of the results of the election for which the petition qualified for, or if the measure, for any reason, is not submitted to the voters, eight months after the deadline for submission of the petition to the elections official.

(c) Failure to comply with this section shall not invalidate any signatures on a state or local initiative petition.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

9609. (a) Prior to allowing a person to circulate an initiative petition for signatures, the person, company official, or other organizational officer who is in charge of signature gathering shall execute and submit to the proponents, a signed statement that reads as follows:

I, NITZA DERFNER, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO
THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose the following additions to the Government Code, related to land use and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of

the measure) read as follows:

An act to add Section 25082, 37113, and 65805 to the Government Code, related to land use.

Summary: Currently municipal residents that are injured economically or otherwise by municipal agencies or municipal practices are at significant disadvantage if they attempt to air their grievances in a court of law. Municipalities have virtually unlimited sources of funds to finance legal actions. Individual residents are often unable to bring or maintain litigation in light of this massive imbalance. This proposal serves to cure this imbalance by providing resident's costs and reasonable attorney's fees should resident win their case.

SECTION 1. The people of the State of California find and declare that landowners who contest planning or zoning ordinances, regulations, permits, or

any other decision made by, or on behalf of, a city or county are commonly injured economically or otherwise by local governmental practices; and are commonly at a significant financial disadvantage if they bring a cause of action regarding planning or zoning ordinances, regulations, variances, permits, or any other decision made by, or on behalf of, a city or county.

SEC. 2. The people of the State of California find and declare that this act is a matter of statewide concern.

SEC. 3. Section 25082 is added to the Government Code, to read:

25082. Any owner of property within the county who requests the right to testify before the board at a public hearing regarding a land use matter subject to Section 65850 shall be allowed to so testify within 90 days after receipt of a written request therefor, and he or she shall be given at least 20 days advance

written notice of the time and date of that hearing.

SEC. 4. Section 37113 is added to the Government Code, to read:

37113. Any owner of property within the city who requests the right to testify before the legislative body at a public hearing regarding a land use matter subject to Section 65850 shall be allowed to so testify within 90 days after receipt of a written request therefor, and he or she shall be given at least 20 days advance notice of the time and date of that hearing.

SEC. 5. Section 65805 is added to the Government Code, to read:

65805. (a) In any action against a city or county, including a city and county, a chartered city, or a chartered county, brought by or on behalf of a landowner under this title, both of the following shall apply:

(1) If the landowner is the prevailing party,

the landowner shall be entitled to costs and reasonable attorney's fees.

(2) If the city or county is represented by an attorney, including a city attorney or county counsel, who is compensated for representation in this action on an hourly or per case basis, rather than by a salary or a fixed retainer, the attorney shall not be compensated for this representation unless and until the action is final and the city or county is the prevailing party.

(b) For purposes of this section, "action" includes arbitration and mediation.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.